

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MACK FINANICAL SERVICES, a division
Of VFS US LLC, f/k/a Mack Commercial
Finance, VOLVO FINANCIAL SERVICES, a
Division of VFS US LLC, f/k/a Volvo
Commercial Finance,

MEMORANDUM & ORDER
10-CV-3799(JS)(ETB)

Plaintiffs,

-against-

FRANK PO CZATEK and ROBERT PO CZATEK,

Defendants.

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APPEARANCES:

For Plaintiffs: Christopher B. Block, Esq.
Joshua S. Hurwit, Esq.
Gordon & Rees LLP
90 Broad St.
New York, NY 10005

For Defendants: No Appearances.

SEYBERT, District Judge:

Plaintiffs Mack Financial Services and Volvo Financial Services ("Plaintiffs") sued Defendants Frank and Robert Poczatek ("Defendants") for breach of guaranty. Defendants defaulted, and Plaintiffs moved for a default judgment. On August 30, 2011, Magistrate Judge A. Kathleen Tomlinson issued a Report and Recommendation ("R&R") recommending that Plaintiffs be awarded \$776,604.47 in damages, costs, and attorneys' fees. No objections were filed within the prescribed time. With one exception, the Court agrees with Judge Tomlinson's

recommendations.

The R&R awarded prejudgment interest at 18% because, for large commercial loans, North Carolina law honors the interest rate to which the parties to the loan agreed. The R&R calculated prejudgment at 18% over a 365-day year for an amount of \$355.74 accruing in interest each day for the 150 days between February 1, 2011 (the date of Plaintiffs' default judgment motion) and July 1, 2011. (R&R 11.) In this case, the parties had actually agreed to 18% percent interest computed on the basis of a 360-day year (see Docket Entry 24 at 2), which results in an amount of \$360.69 accruing in interest each day. Additionally, the Court concludes that, rather than cutting off at July 1, 2011, prejudgment interest should accrue each day between February 1, 2011 and the date of judgment.

The remainder of the R&R is thorough, well-reasoned, and free from clear error. Accordingly, the Court adopts all portions of the R&R except the discussion of prejudgment interest and orders that a default judgment be entered against Defendants. Plaintiffs are awarded (1) \$721,370.97 in principal; (2) \$1,272.62 in attorneys' fees; (3) \$599.19 in costs; and (4) \$360.69 per day in prejudgment interest from February 1, 2011 through the date of judgment.

The Clerk of the Court is directed to mark this case CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: September 30, 2011
Central Islip, New York